IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-121

DANIEL WALKER, et al.,

Petitioners,

vs.

MALCOLM LITTLE, JR.,

Respondent.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

WILLIAM J. SCOTT,
Attorney General,
State of Illinois,
DONALD B. MACKAY,
MELBOURNE A. NOEL, JR.,
Assistant Attorneys General,
188 West Randolph Street – Suite 2200,
Chicago, Illinois 60601,
Attorneys for Petitioners.

JOAN BAINBRIDGE SAFFORD,
Assistant Attorney General,
Of Counsel.

KEENAN PRINTING COMPANY (312) 372-0066

TABLE OF CONTENTS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-121

DANIEL WALKER, et al.,

Petitioners,

vs.

MALCOLM LITTLE, JR.,

Respondent.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

THE DISTRICT COURT WAS NOT REQUIRED TO IGNORE THE SWORN COMPLAINT AND AFFIDAVITS OF PLAINTIFF WHICH CONTRADICTED THE ALLEGATIONS OF THE AMENDED COMPLAINT, AT LEAST AS TO HIM.

The brief for respondent in opposition to the petition for writ of certiorari continues to distort the facts with respect to the conditions experienced at Stateville Correctional Center by the sole plaintiff remaining in this suit, which is now limited to an action for money damages. This same misreading of the complaint and record as it applied to plaintiff Malcolm Little was in part the cause of the erroneous decision made by the Seventh Circuit Court of Appeals.

Respondent states that the well pleaded allegations establish that:

> [R]espondent was repeatedly victimized by acts and threats of physical violence and by sexual assaults while a member of the general inmate population at Stateville Penitentiary . . . [and] lived in constant and imminent fear of attack especially by inmates affiliated with Chicago street gangs. (amended complaint, para. 16)
>
> . . . Fearing for his personal safety, respondent refused to comply with . . . work assignments [in areas controlled by gang-affiliated inmates.] Upon his refusal, petitioner committed respondent to isolation and, at the direction of the prison disciplinary committee, imposed other sanctions upon respondent. (Amended Complaint, para. 17)
>
> . . . [I]n order to escape the constant threat of (1) violence and sexual assault in the general population, and (2) repeated punishment by the petitioner's disciplinary committee for refusal to accept assignments

> . . . respondent was compelled to accept placement in a segregation safekeeping status . . . for over a year . . . (Amended Complaint para. 19)
>
> As the direct result of this segregation status, respondent suffered . . . the same punitive deprivations and restrictions as they imposed on prisoners confined in disciplinary segregation. (Amended Complaint, para. 22)
>
> [B]ecause . . . respondent lived in the same area of the prison where the most violence-prone inmates . . . are housed . . . respondent suffered increased acts and threats of sexual assault and physical violence [which] petitioner . . . refused . . . to remedy. (Amended Complaint, paras. 23, 24)

(Brief of Respondent in Opposition, 3-6)

Paragraph 25 of the amended complaint alleges that defendants failed to provide reasonable protection against an inmate insurrection in which mutinous inmates took over the cell block where the plaintiff was housed. The insurgent prisoners sexually assaulted three other inmates and stole or destroyed property, including legal materials. (Appendix C, p. 5)

Although the amended complaint, which was framed as a class action, made such allegations with respect to a *class* of prisoners (Amended Complaint, paras. 16, 17), that complaint contained *not one specific allegation with respect to Malcolm Little*. Once the request to proceed with the complaint as a class action had been denied,* the court was not obliged to read each allegation in the singular as if it applied to Malcolm Little. This is particularly true

---

*The denial of the right to proceed as a class action was not appealed.

since the affidavits which were a part of the original complaint filed January 3, 1973 (Appendix A) and supplementary complaint filed February 28, 1973 (Appendix B) directly contradicted the most serious of the general allegations of the amended complaint, at least as to Little.

The sworn complaint and affidavits establish that Malcolm Little *never* was a member of the general population of Stateville during the subject period but was housed for five days in transfer gallery after his transfer from Vienna Correctional Center: that he *never* was punished for refusing work assignment but instead was placed in investigation status for one night in response to his refusal, and then was assigned to segregation safekeeping status; that he *never* was personally attacked or sexually assaulted in the general population of Stateville Correctional Center (Appendix A, pp. 3-5); and that he *never* was attacked in protective segregation in Stateville Correctional Center. In fact, he vehemently denied that he witnessed sexual abuse or assaults by other prisoners in protective segregation or by other segregated prisoners. (Appendix B, p. 3) The amended complaint itself establishes that Malcolm Little *never* was sexually assaulted or beaten during the inmate take-over of Cellhouse B on September 6, 1973, para. 25, Appendix C.

Assuming portions of the amended complaint which are uncontradicted by Little's own sworn statements apply to Little, the complaint at most establishes that 1) Little accepted placement in segregated safekeeping status because of fear of violent or sexual assault by gang-affiliated inmates in the general population; 2) while in segregated safekeeping plaintiff was deprived of those privileges only available to prisoners in the general population; 3) he witnessed incidents of intimidation of other prisoners in

safekeeping by prisoners who remained outside the segregated cells; 4) he requested defendants to take action against these abuses which they did not do; and 5) during the cellhouse takeover on September 6, 1973, rebellious inmates terrorized plaintiff who witnessed sexual assaults on three inmates and had some of his property stolen.

The issue then, as previously stated, is whether plaintiff could maintain a cause of action for damages based on 1) deprivations suffered because of his status in protective segregation; 2) his sense of fear and intimidation caused by witnessing or hearing of assaults on others; and 3) the loss of property and exposure to rebellious prisoners during the September, 1973, mutiny.

Petitioner has contended in Part IV of the Petition for Writ of Certiorari that the facts established by the pleadings were not clearly violative of the constitutional rights of plaintiff during the period from 1972-1974. Therefore, under the principles of *Wood* v. *Strickland*, 420 U.S. 308 (1975), money damages could not be assessed.

The District Court rightly ignored those general allegations which clearly did not apply to Malcolm Little. The deprivations here complained of, when imposed on inmates in punitive or investigative segregation status, do not rise to the level of a violation of constitutional rights. *See, e.g., Gardner* v. *Thompkins*, 464 F. 2d 1031 (5th Cir. 1972) (recreation); *Cooper* v. *Pate*, 382 F. 2d 518 (7th Cir.) (corporate religious services); *McLaughlin* v. *Royster*, 346 F. Supp. 279, 311 (E.D. Va. 1972) (job, schooling, training assignment); *Estelle* v. *Gamble*, ——U.S.——, 97 S. Ct. 285 (1976) (medical treatment); *Wilson* v. *Prasse*, 325 F. Supp. 9 (W.D. Pa. 1971) (nutritionally sound food). The only law on deprivation of the privileges of the general population for those in volun

tary safekeeping status because of perceived threats in the general population favored the defendants. *Breeden* v. *Jackson,* 457 F. 2d 578 (4th Cir. 1972) No case had suggested that individual liability of prison officials would lie for the intimidating atmosphere visited on prisoners by their fellow inmates. *Holt* v. *Sarver,* 442 F. 2d 304 (8th Cir. 1971), cited by respondent, involved injunctive relief and can be distinguished in any case because the terrorizing trusties were clearly agents of the state. And responding trusties were clearly agents of the state. And respondent cites no case holding prison officials liable for damages to prisoners or their belongings as a result of a sudden prison insurrection by inmates.

While the presence of "dangerous" inmates is endemic to the prison setting, in this case, by celling each segregated prisoner separately, prison officials in fact provided maximum protection until they were overwhelmed in the September 6, 1973 mutiny. Plaintiff alleged no facts and could not which would indicate the gross negligence or deliberate act necessary to hold prison officials responsible for the damages sustained in the riot. See, *e.g., United States ex rel. Miller* v. *Twomey,* 479 F. 2d 701 (7th Cir. 1973).

Petitioner is, of course, aware that the amended complaint could be treated as superseding the original and supplementary complaints and affidavits,* 71 CJS PLEADING, § 321, *Bullen* v. *DeBretteville,* 239 F. 2d 824, 833 (9th Cir. 1956); *Nisbet* v. *Van Tuyl,* 224 F. 2d 66, 71 (9th Cir. 1955). Or it could be treated as a supplementary complaint,

*To do so, of course, would eliminate *all* specific allegations with respect to the plaintiff.

as it alleges new claims and matters occurring after the filing of the original and supplemental complaints. See, *e.g., United States* v. *Ruben,* 313 F. 2d 673 (9th Cir. 1963). In such cases the affidavits would stand as part of the original and supplementary pleading, Fed. R. Civ. Proc. R. 10. Where an affidavit and the general allegations of the pleadings conflict, the affidavit must control. See, *Nishimatsu Construction Co., Ltd.* v. *Houston National Bank,* 515 F. 2d 1200 (5th Cir. 1975), *Foshee* v. *Daoust Construction Co.,* 185 F. 2d 23 (7th Cir. 1950).

In any case, whether the sworn statements of plaintiff Malcolm Little are considered part of the pleadings, and were appropriately considered on a motion to dismiss, or are an independent part of the record requiring that the dismissal in this case be treated as summary judgment under Federal Rules of Civil Procedure, Rule 56, their import cannot be ignored. It would elevate form over substance to sustain the Seventh Circuit's decision and force these defendants to trial when those remaining allegations which are not directly contradicted by Malcolm Little's own words do not state a cause of action for damages.

Respectfully submitted,

WILLIAM J. SCOTT,
Attorney General,
State of Illinois,
DONALD B. MACKAY,
MELBOURNE A. NOEL, JR.,
Assistant Attorneys General,
188 West Randolph Street - Suite 2200,
Chicago, Illinois 60601,
Attorneys for Petitioners.

JOAN BAINBRIDGE SAFFORD,
Assistant Attorney General,
Of Counsel.

APPENDIX A

Complaint and Affidavit filed January 17, 1973

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT
CHICAGO, ILLINOIS

MALCOLM L. LITTLE, JR., and all others SIMILARLY SITUATED (Plaintiffs) vs. John J. Twomey, Warden Joliet Correctional Complex, Stateville (Defendants)	CLASS ACTION CIVIL RIGHTS SUIT

PETITION FOR CLASS ACTION
(Jurisdiction) **CIVIL RIGHTS SUIT**

Comes now, Malcolm L. Little, Jr., Plaintiff herein, who hereby files within the above named court a pleading in the nature of a petition for a civil rights suit pursuant to the United States Code, Title 42, Section 1983 and 1985 thereto.

INTRODUCTION

This suit is brought by plaintiffs (Malcolm L. Little, Jr., and all others similarly situated) for redress of a substantial deprivation of their rights provided by the Eighth and Fourteenth Amendments to the United States Constitution which they have had or will have had suffered by Warden John J. Twomey's intentional, bad faith exercise of his state official power as Warden of the Illinois State Penitentiary, Stateville Branch, Illinois.

STATEMENT OF FACTS

Plaintiff, Malcolm L. Little, Jr., was sentenced to the Illinois State Penitentiary to a term of not less than five (5) years nor more than twelve (12) years for the offenses of armed robbery and attempt rape, respectfully, in the Circuit Court of Cook County, Illinois, and has been incarcerated continuously since August, 1969.

Plaintiff, having been subjected to a murderous beating, kicking, stomping in the Vienna Correctional Center, Vienna, Illinois on September 15, 1972, was thereafter, on the aforesaid day at 10:00 p.m. arbitrarily and capriciously transferred to Menard Branch on an emergency administrative order, in which he was denied his opportunity to secure his release on parole for one (1) additional year on November 15, 1972, because of the Vienna attacks upon his person for which he was transferred.

On September 15, 1972, plaintiff, while in Vienna in the presence of two other caucasian inmates, Hank Dunn and Fred Dailey, who were not transferred from Vienna, was physically attacked by seven (7) or eight (8) Negro inmates, all of whom were members of the Satan's Gangster's Black Disciples, Chicago street gang, for no apparent reason other than racial hatred.

The racial ratio in both Vienna and Menard is approximately fifty percent Negro, which did, to a certain degree, afford plaintiff a minimal degree of safety from recurring murderous assaults. However, on December 6, 1972, after considerable remonstrance to Mr. Peter B. Bensinger, Director department of corrections, in the form of correspondence, of which plaintiff has his original copies and the director's replies, Mr. Bensinger and Mr.

Monahan, assistant director, refused to cancel the transfer to Stateville, although plaintiff unequivocally apprised Mr. Bensinger in correspondence of November 7, 1972 (plaintiff now has a carbon copy, together with the director's reply thereto) that his life and safety would be in imminent danger if he were to be returned to Stateville Branch.

Even a cursory inspection of Stateville's current racial ratio will reveal that it is at least 70 percent Negro, most of whom are affiliated with Black street gangs. A substantial number of the gang members are affiliated with the Gangster's Black Disciples; in fact, one of whom has been returned to Stateville from Vienna, in which he was passively involved in the murderous attack upon plaintiff. Therefore, it would be virtually impossible for plaintiff to be placed in the Stateville general population without recurring attacks by gang members here. To this very date, January 1, 1973, even though plaintiff's contacts with general population have been minimal, he has received numerous threats from these gang members because of what transpired in Vienna.

Within five days after plaintiff's return to Stateville, on December 13, 1972, he was advised by cell house "B" officers, in which transfer gallery is located, that he would be required to accept an institutional assignment in the clothing room, which, at last tally, had seventeen (17) Negroes and one (1) caucasian assigned thereto. Immediately, after refusing this assignment for personal reasons in regard to his life and safety, plaintiff was locked up in investigation for one (1) night. Captain Martin P. Shifflet, who is in charge of assigning transferees, should have been aware of the obvious security problem entailed

by such an assignment; yet, I was afforded absolutely no alternatives with regard to assignment. Moreover, Captain Shifflet, having access to all prisoners' records, undoubtedly was cognizant of the Vienna incident.

Early the following morning, December 14, 1972, plaintiff was summoned to the isolation unit, in which he appeared before a disciplinary committee which consisted of the following persons: Captain A. J. Pollmann, Officer R. Jones and Mr. Wl. Tucker. When apprised of plaintiff's fear for his life and safety in the Stateville institution, more specifically, the clothing room, Captain A. J. Pollman departed from the room briefly. Upon re-entering the room, he attempted to discredit plaintiff's fear for his life and safety by stating: "that he did not believe that the problem was too serious." Plaintiff had apprised the disciplinary committee on two (2) consecutive days, December 13 and 14, respectively, that one of his assailants in Vienna was presently in Stateville.

In an interview with Mr. Eugene McCarney, Counselor, Clinical Services, Stateville Branch, with whom plaintiff is acquainted, plaintiff apprised Mr. McCarney of his qualms with regard to entering a very unsafe, extremely hostile, and predominantly Negro environment, in which his safety and life would be endangered. After hearing facts regarding plaintiff's situation, Mr. McCarney advised him that there seemed to be sufficient grounds for a safekeeping lock-up. During the disciplinary committee hearing, plaintiff advised the three members of the committee with regard to his conversation with Mr. McCarney. Even with this knowledge, the committee threatened to place plaintiff in the hole.

Ultimately, without being offered any alternatives, plaintiff was psychologically coerced into signing a slip captioned "Segregation Safekeeping" which states: "I, inmate ....., refuse any placement in the general population at this institution and I am voluntarily requesting to be placed in Segregation Safekeeping for my own safety and welfare." Copies of this slip are disseminated to the assignment committee, clinical services, RI & D center, record office, and one inmate copy.

It is plaintiff's contention that, if the general population were even reasonably safe, nobody would have sufficient motive to lock themselves up for their own welfare. (Reference is drawn to the number of inmates, most of whom are white, who are currently locked up in safekeeping in cell house "B", Six (6) gallery). However, as superficial scrutiny will disclose, gangs are permitted to run rampant in Stateville without sufficient restraint to afford adequate protection from sexual attacks, murderous batteries, commissary thefts, etc., all of which is tacitly promoted by the failure to prosecute perpetrators for these unlawful and atrocious offenses. If the gangs attack officers, as is frequently the case, they do receive some sort of punishment; whereas, if they elect to literally rip-off other inmates, it seems to be done with apparent impunity, which amounts to concealment on the part of officials.

It is only in sheer desperation and abject resignation that an inmate consigns himself to safekeeping-segregation status; moreover, if suitable alternatives were available, which would afford reasonable safety to the inmates, the institution could abolish this so-called voluntary safekeeping. Segregation, in contrast to the general population, precludes an inmate from exercising indoors or outdoors,

attending religious services, using legal materials in the law library, eating his meals under semi-sanitary conditions, and even keeping his cell clean because of the lack of a broom or mop – brooms and mops are impermissible items in segregation.

It is plaintiff's further contention that the prison sentence that is imposed is a term of years, regulated by statute, to the general population of the penal institution; furthermore, to have a harsher punishment inflicted would be, in effect, to negate the safeguards that are built into the judicial sentencing process. If Stateville provided any semblance of security for inmates, then absolutely no prisoner of normal intelligence would voluntarily expose himself to a form of punishment, segregation, which in essence is far harsher than general population. Therefore, it is plaintiff's contention that this so-called voluntary safekeeping is in fact involuntary and a last resort to protect oneself from murderous attacks, sexual assaults, and other daily rip-offs.

Plaintiff, as well as other inmates have been denied access to the law library and the legal materials therefrom while they are in segregated status. In addition, without these legal materials, e.g., typewriter, paper, law books, etc., the inmates on segregation status are totally denied access to the courts, habeas corpus, post-convictions, and other collateral legal proceedings. In spite of the fact that the rule book, April, 1972, makes provisions for segregated inmates to have access to the law library, the privilege is simply not adhered to. Attached hereto, in support of this law library denial, is a copy of a petition which has been circulated to the appropriate institutional officials.

ADDENDUM TO STATEMENT OF FACTS

Since initially preparing the statement of facts herein, it has come to my attention through personal observation, that this Lock-Up gallery in cell house "B", 6 gallery, is only partially safe at best; for instance, plaintiff has personally witnessed no less than two (2) attacks and actual batteries upon persons who have literally given up their privileges to be safe; moreover, from his open cell bars, through which voices are quite audible, plaintiff is in a position to observe threats and attempted attacks by other inmates, who are not in this Lock-up, on an ongoing, continual basis.

It seems ironic that inmates, who adjusted exceedingly well to the general populations of other institutions, are simply required to lock themselves up with no alternatives provided them which would insure their reasonable safety. Moreover, there is currently in operation a special treatment unit (segregation) SPU in Joliet, to which intractable prisoners are sent for serious or frequent rule violations: men who exhibit a chronic inability to adjust.

During the past two weeks, since I have been on Lock-up for my own safekeeping, several other prisoners, who are similarly situated, have shown me commitment recommendations from the institutional assignment, whose Chairman is Captain Martin P. Shifflet, committee, advising them that they are scheduled to be transferred to this aforesaid special treatment unit because prisoners refused an assignment proffered since their safety would have been thereby imperiled. It is plaintiff's contention, which may be supported by myriad witnesses, including some institutional employees, that the prisoners who received such recommendations, did not refuse any place-

ment, but only assignment placement in the general population which would endanger their lives or the lives of other prisoners and which would inevitably jeopardize their chances for parole thereby.

In most cases, the prisoners in this predicament were merely given an ultimatum, which at best was limited to two or three very unsafe assignments, before receiving notice for said special segregation unit in Joliet Branch. Plaintiff contends that the injunctive power of the Honorable Court should be invoked forthwith precluding such transfers until a massive investigation is initiated into this egregious misuse of any special program and/or segregation unit. To place a prisoner in such a segregation unit for intractable prisoners, when he in fact has been guilty of no rule infraction, under the pretext of "his own safety or safekeeping" irreversibly offends even primitive concepts of human decency and sensibilities; moreover, such placement in a special segregated unit would be inevitably tantamount to extremely cruel and unusual punishment, particularly when the afflicted person (prisoner) has done absolutely nothing except to request that he be provided safety. Why does the institutional policy refuse to acknowledge the current lawlessness which thoroughly pervades this institution? In addition, until this lawless situation is rectified, why do the institutional officials fail to provide the afflicted with reasonable alternatives; institutional transfers, etc., to segregated status which is tantamount to punishment no matter what appelation or designation is attached to it. Reference is drawn to the fact that many of these men, including the plaintiff, effected excellent adjustments in other institutions and participated in numerous constructive activities; yet, at this time, they are being subjected to punishment while the gangs run rampant; is this equitable?

Once again, Plaintiff draws reference to the segregation unit in which he presently resides and the loss of many privileges; whereas a person who is residing in this segregation status is still subjected to attacks in places such as the shower room, etc.

ALLEGATIONS FOR CIVIL RIGHTS COMPLAINT

(No. 1)

That during all times herein mentioned, John J. Twomey, Warden, while acting under color of his state office, Warden, did intentionally act in bad faith to deprive substantially Malcolm L. Little, Jr., of his right provided under the Eighth (8th) Amendment to the United States Constitution to be free from cruel and unusual punishments *when defendant, by failing* to provide reasonable safety in the Stateville general population, psychologically coerced plaintiff to sign in desperation a slip consigning himself to a segregated status, wherein he does not receive many of the privileges of the general population, in spite of the fact that plaintiff has been guilty of no misconduct.

(No. 2)

That during all times herein mentioned, John J. Twomey, Warden, while acting under color of his state office, Warden, did intentionally act in bad faith to deprive substantially Malcolm L. Little, Jr., of his right provided under the Fourteenth (14th) Amendment to the United States Constitution to the due process of all laws *when defendant* prohibited plaintiff from having access to the law library and the legal materials therein.

COMPLAINT

The aforesaid substantial deprivations involved in this civil suit injured plaintiffs, as follows:

1. Total loss of institutional mobility and participation in any recreational activities.
2. Loss of work opportunities of a rehabilitative nature.
3. Loss of schooling and training opportunities.
4. Great mental anguish.
5. Denial of access to law materials and supplies.
6. Needless degradation.
7. Loss of opportunity to attend religious services.
8. Loss of opportunity to eat warm food in the dining room.
9. Inadequate sick call procedure on segregated status.

JUDGMENT

The evidence shows that plaintiffs have been, and are being, substantially deprived of their rights provided by the United States Constitution. In redress for these deprivations, plaintiffs pray this Court will direct the Warden to bear the legal responsibility of plaintiff's prayer for relief, as follows:

A. That this Court's injunctive power will be invoked for the purpose of ensuring that inmates, who are segregated for their own safety, will be provided with reasonable alternatives in which safety will be afforded them.

B. That this Court's injunctive power will be invoked for the purpose of preventing sexual assaults, murderous attacks, and other rip-offs, or in the alternative, to enjoin the institutional officials to expose, publicize, and prosecute institutional offenses as prescribed in the Illinois Criminal Code.

C. That this Court's injunctive power will be invoked for the purpose of enjoining institutional authorities to refrain from inflicting punishments in reprisal (both subtle or overt) for this suit.

D. That this Court's injunctive power will be invoked for the purpose of ensuring that prisoners in segregated status will be afforded access to the law library and the materials therein at all reasonable times.

/s/ MALCOLM L. LITTLE, JR.
Plaintiff, Malcolm L. Little, Jr.

Subscribed and sworn to before me this 5th day of January, 1973, A.D. My Commission expires November 14, 1976.

/s/ EDWIN J. MEYER
Public Notary

STATE OF ILLINOIS)
) SS
COUNTY OF WILL)

AFFIDAVIT IN SUPPORT OF CIVIL RIGHTS SUIT ALLEGATIONS

Comes now, Malcolm L. Little, Jr., Affiant herein, who, being first duly sworn upon oath, doth depose and state:

1. That I was sentenced to a term of five to twelve years at the Illinois State Penitentiary, Stateville Branch, Joliet, Illinois, and John J. Twomey is the Warden at said penitentiary.

2. That said Warden fails to employ adequate security measures to ensure the safety of inmates in aforementioned penitentiary.

3. That several inmates in segregation-safekeeping have been psychologically coerced to place a so-called voluntary signature on a slip of paper which exposes them to harsher treatment because of the total lack of alternatives to such placement.

4. That said Warden has been depriving inmates in segregation of their constitutional right to access to the Courts by denying them use of the law library.

5. That I have attached a Motion for an evidentiary hearing so that an open court hearing can be held to examine into the above charges.

Wherefore, I, Malcolm L. Little, Jr., Affiant herein, understand that I am liable for perjury were I to give false testimony in the above affidavit.

/s/ MALCOLM L. LITTLE, JR.
Affiant, Malcolm L. Little, Jr.

Subscribed and sworn to before me this 5th day of January, A. D. My Commission expires March 14, 1976.

Public Notary
/s/ EDWIN J. MEYER

APPENDIX B

February 28, 1973

Supplemental Complaint and Affidavit Filed

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MALCOLM L. LITTLE, JR., DOMINICK TROMBETTA, DALE J. ALLEN, VINCENT F. PROVENZANO, RICHARD L. WHITLEY, and DAVID STANLEY SWANEY, on behalf of themselves and all others similarly situated,
Plaintiffs,

vs.

JOHN J. TWOMEY, et al., Warden, Joliet Correctional Complex, Stateville Branch, Illinois Penitentiary,
Defendants.

Civil No. 73 C 134

PLAINTIFF'S SUPPLEMENTAL COMPLAINT AND MEMORANDUM OF LAW IN CIVIL RIGHTS SUIT

Plaintiff Malcolm L. Little, Jr., when commencing Civil No. 73 C 134, was compelled to proceed pro se; therefore, since he is not a licensed attorney at law or legal scholar, certain deficiencies, of course, were inevitable. On the other hand, although Plaintiff Little was somewhat vague

with regard to the proper members of the class, plaintiffs pray that the instant cause will be sustained by the honorable court as a class action civil rights suit pursuant to Federal Rules of Civil Procedure, Rule 23 and in support whereof:

Named plaintiffs are members of a class of inmates confined to segregation-safekeeping (protective custody), all of whom are Caucasian and thirty years old or under, who are presently, owing to their status on safekeeping unit, being denied "equal treatment" afforded nonsegregated inmates. Furthermore, none of these inmates have violated any institutional rule or regulation which would serve to justify the "Unequal" treatment to which they are presently being subjected. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and all persons constituting the above described class who are similarly situated. The persons in the class are so numerous that joinder of all persons therein is impractical. There are questions of law or fact common to the class, the claims of the representatives are typical of the claims of the class, and the representatives will fairly and adequately protect the interests of the class.

All of the plaintiffs herein and members of their class have been the victims of racial beatings, sexual attacks, or commissary extortions, which has necessitated their placement in safekeeping segregation. Plaintiffs, owing to the Stateville Branch exceedingly high ratio of black inmates, most of whom are gang members, are presently in fear for their very life and safety in this institution. Plaintiffs further maintain that although every member of their class has been a victim of this gang violence, there have been no prosecutions by the Will County Offi-

cials; in fact, these acts of violence by black gangs have been for the most part condoned. Therefore, the Defendants' contention that all acts of violence are prosecuted is prima facie false. In support thereof, plaintiffs can produce medical records and witnesses to these racial attacks for which prosecution was never instituted. Institutional craimes which are perpetrated by inmates against other inmates are not published, prosecuted, etc.

Plaintiff Malcolm L. Little, Jr. asserts that the Defendants falsely stated that he had allegedly been threatened by other persons in his segregated unit. However, plaintiff Little did allege in the original complaint that, since inmates from non-segregated galleries encompassing the safekeeping unit are inadequately separated from those inmates in safekeeping (inmates who are not in segregation are housed on two galleries below him and whose voices are audible through the open cell bars), he has been continually harassed by Black inmates (nonsegregated), who walk the first floor, thirty (30) feet below his cell, and on occasion have threatened to throw gasoline into his cell. The insinuation that plaintiff Little had been verbally threatened by inmates in protective custody (safekeeping) is patently false.

In addition, Defendants' assertion that plaintiffs have failed to state a claim upon which relief can be granted is obviously untrue, and the plaintiffs' prayer for injunctive relief should issue and the cause should prevail on its merits for the following reasons:

[Memorandum of law deleted.]

Respectfully submitted,

/s/ MALCOLM L. LITTLE, JR.
Malcolm L. Little, Jr.

/s/ DOMINICK TROMBETTA
Dominick Trombetta

/s/ DALE J. ALLEN
Dale J. Allen

/s/ VINCENT F. PROVENZANO
Vincent F. Provenzano

/s/ RICHARD L. WHITLEY
Richard L. Whitley

/s/ DAVID STANLEY SWANEY
David Stanley Swaney

AFFIDAVIT

Plaintiffs herein do hereby depose and state that the foregoing information contained herein is true both in substance and in fact to the best of their knowledge, and that currently all of the above plaintiffs are confined in segregation-safekeeping in the Stateville Branch of the Illinois State Penitentiary and that they are proper members of the class herein referred to.

/s/ MALCOLM L. LITTLE, JR.
Malcolm L. Little, Jr. – Affiant

Subscribed and sworn to before me this 28th day of February, 1973, A. D. My Commission expires November 14, 1976.

/s/ EDWIN J. MEYER
Notary Public – Stateville Branch

APPENDIX C

First Amended Complaint Filed November 30, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MALCOLM LITTLE, JR., RICHARD L. WHITLEY, individually and on behalf of all other persons similarly situated,
Plaintiffs,
vs.
DANIEL WALKER, individually and as Governor of the State of Illinois, ALLYN R. SIELAFF, individually and as Director of the Department of Corrections, PETER B. BENSINGER, individually, JOSEPH G. CANNON, individually and as Warden of the Stateville Branch of the Illinois State Penitentiary, JOHN J. TWOMEY, individually, VERNON REVIS, individually and as Superintendent of the Stateville Branch of the Illinois State Penitentiary, GEORGE J. STAMPAR, as Administrative Assistant to the Warden of the Stateville Branch of the Illinois State Penitentiary, MARTIN P. SHIFFLET, individually and as Chairman of the Assignment Committee of the Stateville Branch of the Illinois State Penitentiary, J. LIETHLIGHTER, G. HUSTON, J. McFADDEN, A. J. POLLMAN, R. JONES, W. TUCKER, individually and as members of the Disciplinary Committee of the Stateville Branch of the Illinois State Penitentiary, and the DEPARTMENT OF CORRECTIONS of the State of Illinois,
Defendants.

No. 73C134 and related cases.

FIRST AMENDED COMPLAINT

Plaintiffs, Malcolm L. Little, Jr., and Richard L. Whitley, individually and on behalf of other persons similarly situated, pursuant to leave of Court granted on October 16, 1973, for their first Amended Complaint, say as follows:

[Statement of jurisdiction and parties omitted]

VI. FACTUAL ALLEGATIONS

16. Before their classification into "Safekeeping-Segregation" status, plaintiffs repeatedly suffered acts and threats of physical violence, sexual assaults, and other crimes perpetrated by other inmates from whom plaintiffs were not reasonably protected by defendants. During their placement in the general population of inmates at Stateville, plaintiffs lived in constant and imminent fear of such violence and sexual assaults, especially when inflicted by gang-affiliated inmates.

17. Defendant, Captain Shifflet, ordered plaintiffs to work in certain areas of Stateville effectively controlled by gang-affiliated inmates who repeatedly threatened, and inflicted on plaintiffs, acts of physical violence and sexual assaults. Fearing for their personal safety, plaintiffs refused to comply with such work assignments. Upon their refusal, plaintiffs were committed to isolation and suffered other grievous punishment at the direction of the Disciplinary Committee.

18. In order to escape the constant threat of (1) violence and sexual assaults associated with placement in the general prison population and (2) repeated punishment by the Disciplinary Committee for refusal to accept assignments in areas of Stateville controlled by gang-affiliated inmates, plaintiffs were compelled to accept placement in "Segregation-Safekeeping" status. Plaintiffs' acceptance of placement in "Segregation-Safekeeping" status was coerced by the pervasive climate of fear which defendants permitted to exist in the general prison population by failing to control violence-prone inmates, and especially gang-affiliated inmates.

19. Since May 24, 1972, defendants have classified plaintiffs in "Segregation-Safekeeping" status for varying periods of time, in some instances in excess of one year.

20. By their imposition of "Segregation-Safekeeping" status on plaintiffs, defendants have caused plaintiffs to suffer grievous loss by reason of prolonged segregated confinement and numerous other restrictions and deprivations, including, but not limited to:

(a) Denial of access to religious services, ministrations, and sacraments;

(b) Denial of all opportunities of a rehabilitative nature, including educational and vocational instruction;

(c) Denial of adequate medical and dental treatment;

(d) Denial of adequate means with which to maintain their cells in a clean and sanitary condition;

(e) Denial of essentials necessary for personal hygiene, including access to shower facilities at least once a week;

(f) Denial of access to the prison dining room or to warm food served in a sanitary manner;

(g) Denial of all indoor or outdoor recreational activity;

(h) Denial of effective access to the prison law library and the legal materials contained therein;

(i) Denial of opportunities for parole, work release program or transfer to a minimum security unit or institution.

21. By reason of defendants' imposition of "Segregation-Safekeeping" status on plaintiffs, defendants have confined plaintiffs in or near Gallery 6 of Cell House B at Stateville where defendants also confine inmates in disciplinary segregation. Defendants place inmates in disciplinary segregation if they indicate a chronic inability to

adjust in the general prison population, if they constitute a serious threat to the security of the institution, or if other inmates require maximum protection from them. On information and belief, defendants place the inmates most prone to violence in Cell House B and particularly in or near Gallery 6 of Cell House B, where inmates in disciplinary segregation are kept along with inmates in "Segregation-Safekeeping" status.

22. By reason of defendants' imposition of "Segregation-Safekeeping" status on plaintiffs, defendants have inflicted upon plaintiffs precisely the same punitive restrictions and deprivations as are imposed on inmates confined in disciplinary segregation for violations of prison rules or regulations.

23. By reason of defendants' imposition of "Segregation-Safekeeping" status on plaintiffs and defendants' placement of plaintiffs in Gallery 6 of Cell House B along with inmates in disciplinary segregation and inmates who are especially prone to violence. defendants have denied plaintiffs reasonable protection from repeated acts and threats of sexual assault and violent acts by other inmates, especially gang-affiliated inmates.

24. Defendants require that all of plaintiffs' meals be served to them in their cells and permit plaintiffs' meals to be served to them by inmates who are gang-affiliated and who intimidate plaintiffs and threaten to withhold meals from plaintiffs unless plaintiffs perform unnatural sexual acts through the cell bars. On information and belief plaintiffs have repeatedly been deprived of meals or coerced to perform unnatural sexual acts in this manner. Defendants, their agents and employees have refused to take any action to correct such abuses despite requests by plaintiffs.

25. By reason of defendants' classification of plaintiffs in "Segregation-Safekeeping" status and their placement of plaintiffs in Cell House B along with inmates who are prone to violence. inmates who are gang-affiliated, and inmates who are classified in disciplinary segregation, defendants have caused plaintiffs to suffer injury to their person and damage to their property. In particular, on or about September 6, 1973, defendants failed to afford reasonable protection to plaintiffs. As a consequence, Cell House B was seized by a group of inmates, many of whom were either in disciplinary segregation or were gang-affiliated. The rebellious inmates forced all of the inmates in Cell House B, including plaintiffs, to leave their cells. During the approximately nine hours that Cell House B was in control of the rebellious inmates, several plaintiffs, including Dennis Heinz, Dennis Erlandson, and Robert Drake suffered "gang rapes". Plaintiffs Drake and Erlandson required hospitalization as a result of these attacks by other inmates. Other plaintiffs also suffered acts and threats of physical violence and sexual assault and damage to their personal property, including the destruction and confiscation of legal materials.

26. The level of tension in Cell House B remains extremely high following the rebellion of September 6, 1973. Plaintiffs suffer constant fear of further imminent seizures of Cell House B by other inmates, especially gang-affiliated inmates, from whom they seek protection.

27. Plaintiffs have requested defendants to transfer them to other institutions, but defendants have refused each such request.

28. The conditions, abuses, deprivations, and restrictions to which plaintiffs have been subject were arbitrarily and unreasonably imposed. They shock the conscience of civilized man and are grossly disproportionate to any offense. They are unrelated to and unjustified by any proper penal objective or purpose.

VII. FIRST CAUSE OF ACTION

29. As a proximate and direct result of the aforesaid acts and omissions of defendants, their agents and employees, acting in their official capacities, under the color of State law, plaintiffs have been deprived of their Federal Constitutional rights to Due Process of Law.

30. No adequate state justification exists for the arbitrary denial of plaintiffs' Federal Constitutional rights to Due Process of Law.

VIII. SECOND CAUSE OF ACTION

31. As a proximate and direct result of the aforesaid acts and omissions of defendants, their agents and employees, acting in their official capacities, under the color of State law, plaintiffs have been deprived of their Federal Constitutional rights to Equal Protection of the Laws.

32. No rational basis exists for the arbitrary denial of plaintiffs' Federal Constitutional rights to Equal Protection of the Laws.

IX. THIRD CAUSE OF ACTION

33. As a proximate and direct result of the aforesaid acts and omissions of defendants, their agents and employees, acting in their official capacities, under the color of State law, plaintiffs have been deprived of their Federal Constitutional rights to be free from Cruel and Unusual Punishment.

X. FOURTH CAUSE OF ACTION

34. As a proximate and direct result of the aforesaid acts and omissions of defendants, their agents and employees, acting in their official capacities, under the color of State law, plaintiffs have been deprived of their Federal Constitutional rights to free exercise of their religion, freedom of speech, and freedom of assembly.

IX. FIFTH CAUSE OF ACTION

35. As a proximate and direct result of the aforesaid acts and omissions of defendants, their agents and employees, plaintiffs have been deprived of their constitutional rights under Article I, Sections 2, 3 and 11 of the Constitution of the State of Illinois (1970).

36. As a proximate and direct result of the aforesaid acts and omissions of defendants, their agents and employees, plaintiffs have been subjected to conditions, abuses, deprivations and restrictions in violation of the Unified Code of Corrections, Chapter 38, Section 1001-1-1, et seq., of the Illinois Revised Statutes (1972 supp), including, but not limited to, the following sections of Chapter 38:

(a) Section 1003-6-2(d), requiring the Department to provide educational programs for all committed persons;

(b) Section 1003-7-2(a), requiring the Department to provide every committed person with access to toilet facilities, barber facilities, bathing facilities at least once a week, and a library of legal materials.

(c) Section 1003-7-2(b), requiring the Department to provide facilities for every committed person to leave his cell for at least one hour each day;

(d) Section 1003-7-2(c), requiring the Department to provide every committed person with a wholesome and nutritional diet at regularly scheduled hours, drinking water, clothing adequate for the season, bedding, soap and towels, and medical and dental care;

(e) Section 1003-7-2(f), requiring the Department to permit religious ministrations and sacraments to be available to every committed person;

(f) Section 1003-8-7(b), prohibiting disciplinary restrictions on diet and permitting disciplinary restrictions on clothing, bedding, mail, visitations, the use of toilets, washbowls and showers only for abuse of such privileges or facilities.

XII. DAMAGES

37. Each of the defendants acted with malice or with reckless disregard for the rights of plaintiffs in violation of the Constitution and laws of the United States, the Constitution and laws of the State of Illinois, and the rules and regulations of the Department.

38. Defendants Walker, Director Sielaff, Director Bensinger, Warden Cannon, Warden Twomey, Supt. Revis and Asst. Stampar knew or should have known of the aforementioned abuses, conditions, deprivations and restrictions inflicted on plaintiffs, and failed to prevent such abuses or correct such conditions, deprivations and restrictions.

39. As a result of the aforesaid violations of their rights, plaintiffs have suffered great bodily pain and injury and severe mental and emotional pain, anguish, humiliation and degredation, and will continue so to suffer in the future. They have further suffered a loss of educational and rehabitational opportunities and loss or damage to their personal property. Their classification in "Segregation-Safekeeping" status will impede their eventual release from prison as well as their future well-being both in prison and without.

40. By reason of the foregoing acts, plaintiffs have each been damaged in the amount of $25,000.00.

41. Plaintiffs have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein. Plaintiffs are now suffering and will continue to suffer irreparable injury from defendants' acts, policies and practices unless they are granted the relief prayed for herein.

DEMAND FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this Court:

• • •

[Demand for declaratory and injunctive relief, dismissed as moot November 8, 1974, omitted]

III. Award monetary damages in the sum of $25,000.00 to each plaintiff as compensatory damages for his individual injuries and $10,000.00 as punitive damages to each plaintiff.

IV. Order defendants to pay the costs of this suit and reasonable attorneys' fees to the plaintiffs.

V. Grant such other and further relief as this Court deems just and proper.

MALCOLM L. LITTLE
RICHARD L. WHITLEY
By: DANIEL R. MURRAY,
One of their attorneys.

JEROLD S. SOLOVY
RICHARD C. BOLLOW
DANIEL R. MURRAY
ROBERT L. GRAHAM
JENNER & BLOCK
Attorney for Plaintiffs
ONE IBM PLAZA
Chicago, Illinois 60611
222-9350